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March 5, 2012

Via ECF

Honorable Eric N. Vitaliano  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: *United States v. Anthony Cutaia, 10 CR 10 (ENV)***

Dear Judge Vitaliano:

In connection with the above referenced matter, I write to respectfully request that the court sentence Mr. Cutaia to 33 months incarceration.<sup>1</sup>

**The Pre-Sentence Report & the Plea Agreement**

As the court is aware, as in the case of the other co-defendants in this case, the Probation Department's has determined a different guideline analysis than was contemplated in the stipulated plea agreement.

In this case, the probation department included a 7 level enhancement for the discharge of a weapon (paragraph 146). In plea discussions it was agreed with the Government, that this enhancement would not be sought. As such, it should not apply.<sup>2</sup>

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<sup>1</sup> Pursuant to the plea agreement, this is the lowest sentence I am permitted to advocate for.

<sup>2</sup> It is my understanding that, the Court, at the sentencing of several of the co-defendants where this issue has arisen has determined that the guidelines, as

The other significant issue with the PSR is whether the violation conviction for Unlawful Dealing in Fireworks (paragraph 158)<sup>3</sup> should be counted in his criminal history. It is the position of the defense that this offense is similar to the minor offenses listed in USSG 4A1.2(c)(1) and should not be counted. Some of the factors the court should consider are: (1) this is a violation under the NYS penal law and not a crime; (2) the sentence was a \$150 fine or 15 days in jail. Mr. Cutaia paid the fine; and, (3) this activity is actually legal in some jurisdictions so including it in criminal history would cause some disparities throughout the country of similarly situated defendants.

The Title 18, Section 3553(a) Factors

Section 3553(a) of Title 18, delineates several factors for the Court to consider when determining the sentence of a defendant. Included in this section is the parsimony clause that directs the Court to "impose a sentence sufficient, but not greater than necessary" that weighs all the factors listed in the statute.

First, the court is directed to examine "the nature and circumstances of the offense and the history and characteristics of the defendant". As detailed in the PSR and in the attached character letters, Mr. Cutaia is the youngest of the Cutaia family that were charged in the instant offense. He is a mere 23 year-old kid who made a terrible decision to join his half-brother and others in one of the robberies charged in the massive indictment. He was asked at the last minute to fill in as a driver and he stupidly agreed to participate. This is his first felony conviction and I believe Mr. Cutaia during the pendency of this case realized how his decision to participate in the robbery is now going to affect him and his family. He knows what he did was wrong and fully accepts responsibility for his actions.

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determined by Probation, are factually correct; but, a non-guideline sentence is appropriate to address the difference between the plea agreement and the formulistic application of the guidelines. If the Court is of the same mind in Mr. Cutaia's case, this objection would be withdrawn.

<sup>3</sup> Additionally, any reference to "Sell to a Person 18" should be stricken from the report as it does not apply in this case.

Next, the court is directed to examine "the need for the sentence imposed to..."

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; *In this case, a sentence of 33 months clearly reflects the seriousness of the offense and takes into account Mr. Cutaia's actual role in the offense.*

(B) to afford adequate deterrence to criminal conduct; *Again, a sentence of 33 months provides both general and specific deterrence. Anyone who participates in a robbery like the one Mr. Cutaia participated must know they are going to be imprisoned, no matter the role in the offense. Here, a 33 month prison sentence will send that message clearly.*

(C) to protect the public from further crimes of the defendant; *This is Mr. Cutaia's first felony conviction and the fact that he is going to prison should serve to remind him that he doesn't want to go back. He has been compliant with his terms of release on bail and a sentence of 33 months incarceration is sufficient but not greater than necessary to protect the public from Mr. Cutaia.*

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; *Not applicable.*

(3) the kinds of sentences available; *In this case, there are no mandatory minimums in effect and the Court is free to sentence the defendant anywhere from Probation to 20 years. However, a sentence of 33 months is appropriate and reasonable in this case.*

(4) the kinds of sentence and the sentencing range established by the Guidelines. *This issue was addressed above and a sentence of 33 months, the low end of the range agreed to by the Government and the defendant is appropriate and reasonable.*

(5) any pertinent policy statement by the Sentencing Commission; *Not applicable in this case.*

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; *Not applicable in this case.*

(7) the need to provide restitution to any victims of the offense. *Not applicable*

Character Letters

Several of the people that know Mr. Cutaia the best have written the Court in support of him.

For example, while asking the Court to consider leniency for Mr. Cutaia, Maria Cutaia, his mother, would like you to know:

*"What happened to my family has only made me realize that good people can sometimes find themselves in the 'wrong place at the wrong time'. Unfortunately they can become caught up in a place that would lead them to a less desirable place like prison; whereat one time I only thought bad people were sent there. This only tells me that many good people can go to prison as well for different situations...I ask you here today your Honor to look at Anthony as an individual...He has done anything a normal child growing up in the Borough of Staten Island has done, from little league to school functions. Unfortunately circumstances took him in a different direction. When Anthony is sentenced before you please if you can take into consideration the lower end of his plea and if there is any way possible with your recommendation that Anthony be placed in a facility within close proximity to our home for visitation purposes...This will take a huge toll on us, financially and physically if Anthony is placed in a facility far from home...If you can find it in your heart to be as lenient as you can with him, I beg you. ." (See Exhibit 1 - Letter of Maria Cutaia)*

Continuing in the same vein, Victoria and Nicole Cutaia, Anthony's sisters, state:

*"We are really not sure what we are supposed to be writing or what we are supposed to be asking of you, my mom said just write a letter for your brother to the judge on however you feel and basically we feel so hurt for him and wish there was something we can do to prevent this, our brother does not belong in jail...Well we hope and pray that he is kept safe and*

*possible placed close to home so we can visit him all the time, that would make us really happy..*" (See Exhibit 2 – Letter of Victoria and Nicole Cutaia)

Finally, Mary Gullotta, his grandmother, has this to say about Anthony:

*"At this time I am so sadden by what is happening to my grandson. I ask you here today to please consider him in where he will be placed, my husband and I are very sick and its hard for us to get around...Anthony is more like a son to us since we have lived downstairs from him his whole life. The thought of him being in a faraway place and not to see him often is just tearing us apart...We hope to god that his time in prison is not too long and that we will both be here when he returns home...Our hearts are broken for our grandson who will be missed dearly, I will pray for his safe return home."* (See Exhibit 3– Letter of Mary Gullotta)

#### Self Surrender

As Mr. Cutaia has been on pre-trial release without incident, I am respectfully requesting that he be permitted to self-surrender to the BOP designated institution. In fact, I brought him to meet the FBI agent in this case when he self surrendered to be arrested in this case.<sup>4</sup>

#### Miscellaneous Requests

Further, I respectfully request that the Judgment in this case specifically authorize Mr. Cutaia to have regular contact with and permission to visit with his immediate family (Grandfather, Domenico; father, Salvatore Sr.; and, brothers Salvatore Jr., and Joseph while on supervision.

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<sup>4</sup> The fact he self surrendered should be included in the PSR, either on the cover sheet of the PSR when it details his arrest date or in paragraph 118.

**Conclusion**

I thank you in advance for your consideration of these requests and urge the Court to sentence Mr. Cutaia to 33 months incarceration.

Very truly yours

*Scott E. Leemon*

Scott E. Leemon

Cc: AUSA Rachel Nash (ecf)

# EXHIBIT 1

Honorable Judge Eric N. Vitaliano,

February 20, 2011

I am not sure where to begin this letter however I do believe you receive many of these letters regarding family members of people who will be sentenced. Let me begin by introducing myself, my name is Maria Cutaia and I am the mother of Anthony Cutaia who will be sentenced before you.

I never dreamt in my life when I gave birth to this beautiful little boy that someday I would have to say goodbye to him in this way. However I often dreamt of him going off to college or perhaps getting married. Never would I ever imagine seeing him off to a prison facility especially knowing how hard I worked to raise him and teach him right from wrong. I instilled in him to respect not only others but also the community and overall be the best person he could be.

What happened to my family has only made me realize that good people can sometimes find themselves in the "wrong place at the wrong time." Unfortunately they can become caught up in a place that would lead them to a less desirable place like prison; where at one time I only thought that bad people were sent there. This only tells me that many good people can go to prison as well for different situations.

Your Honor, my son Anthony is a native Staten Islander, born and raised. He has lived in the same home for twenty-one years. At this time I am a single mother raising my daughters, who are Anthony's two younger sisters. They are filled with overwhelming emotions and will miss their brother tremendously; they are extremely close. At this time their father is currently serving time. It has taken an enormous toll on my family.

I know you must have heard this a million times and although I am sure we will get through this, at this very moment it seems like the end of the world to our family. There has been so much sadness around us I think we all have forgotten how to smile.

Although Anthony is a 22 year old man he will always be my little boy no matter how old he is. Sometimes he looks at me and says "Mom can you believe I am going to jail?" and at that very moment I just want to die. However instead I look at him with a very strong face and say "My son you will be alright, the faster we put this behind us the faster we can move on. And you my son will educate yourself and perhaps become a mentor and make the most negative thing that has ever happened to you in your life become the most positive thing. If you can learn something here and use it as a tool for your future that will be very constructive. You will learn about our laws and see how such a split decision can change your life forever."

I ask you here today your Honor to look at Anthony as an individual. He has always been a well respected boy who loves his family unconditionally. Our whole family has always been involved in our community as well as our church. He has done anything a normal child growing up in the Borough of Staten Island has done, from little league to school functions. Unfortunately circumstances took him in a different direction. When Anthony is sentenced before you please if you can take into consideration the lower end of his plea and if there is anyway possible with

your recommendation that Anthony be placed in a facility within close proximity to our home for visitation purposes. Although I am only 46 years old your Honor, I do have some serious health issues. I also work 7 days a week raising my two daughters on my own. This will take a huge toll on us, financially and physically if Anthony is placed in a facility far from home. He has never been away from his family, grandparents and loved ones, so he will need all the visits, love and support that he can receive.

Thank you so much your Honor for taking the time to read my letter. From my heart I tell you this today my son is a good person, and comes from a good family. Unfortunately this has happened to him. If you can find it in your heart to be as lenient as you can with him, I beg you. Again I thank you.

Respectfully yours,

Maria Cutaia

A handwritten signature in black ink, appearing to read "Maria Cutaia".

## EXHIBIT 2

Dear Judge Eric N. Vitaliano,

Hi how are you, I hope this letter finds you in good spirits today. My name is Victoria Cutaia, and I am writing on behalf of my sister Nicole Cutaia and I regarding our brother Anthony Cutaia. We really don't know much about what is happening but we do know that we were frightened to death on that day when the FBI came to our home last May 2010 to come and get our brother. We cannot imagine our brother getting in trouble that entailed men coming to our house with their guns out, we will never forget that.

Your honor we are just a regular family, we are going to miss him so much that it is affecting us in school and with our everyday life that we have to say goodbye to him. Our mom is such a strong women and says that we just need to pull together as a family and be there for Anthony. Your honor is there anyway that Anthony can just stay home with his bracelet and do his time? My sister and I question this everyday.

We are really not sure what we are supposed to be writing or what we are supposed to be asking of you, my mom said just write a letter for your brother to the judge on however you feel and basically we feel so hurt for him and wish there were something we can do to prevent this, our brother does not belong in jail. However we do realize that is only our opinion of him I guess what we are asking you today is please where ever our brother may go, take care of him and put him in a good place where no one will hurt him. Do you think our brother will be ok? Well we will hope and pray that he is kept safe and possibly placed close to home so we can visit him all the time, that would make us really happy.

Thank you so much have a really great day

Victoria and Nicole Cutaia

P.S. since all of this has transpired I have always wanted to become a lawyer one day but perhaps now since all this it seems much more rewarding to become a judge and really have the final decision above all.

# EXHIBIT 3

Honorable Judge Eric N. Vitaliano,

February 20, 2011

My name is Mary Gullotta, and I am the grandmother of Anthony Cutaia, who will be serving time shortly. At this time, I am so sadden by what is happening to my grandson. I ask you here today to please consider him in where he will be placed, my husband and I are very sick and its hard for us to get around.

Anthony is more like a son to us, since we have lived downstairs from him his whole life. The thought of him being in a far away place and not to see him often is just tearing us apart. We love him dearly, and would like to visit him when we feel well enough. We hope to god that his time in prison is not too long and that we will both be here when he returns home. Our hearts are broken for our grandson who will be missed dearly, I will pray for his safe return home. He is a wonderful grandson who has the upmost respect for his grandparents, always checking in with us and his willingness to give a helping hand. And lets not forget the smile he puts on my face when he says, "Grandma you make the best meatballs".

Well I just want to thank you very much for taking the time out to read my letter and I wrote this on paper but my daughter thought it would be easier for you to read if she typed it up.

Hoping to hear from you! Thank you again,

Grandma Mary Gullotta